

Postal Regulatory Commission

§ 3008.7

(1) All Commission personnel other than decision-making personnel;

(2) Commission personnel not participating in the decisional process owing to the prohibitions of §3001.8 of this chapter regarding no participation by investigative or prosecuting officers;

(3) The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue (regardless of normally assigned duties); and

(4) Contractors, consultants, and others hired by the Commission to provide an independent analysis of issues before the Commission (and Commission employees assigned thereto).

§ 3008.5 Prohibitions.

(a) Ex parte communications between Commission decision-making personnel, and the Postal Service or public stakeholders is prohibited.

(b) Commission decision-making personnel shall not rely upon any information obtained through ex parte communications unless the communications are made part of the record of the proceeding, where an opportunity for rebuttal has been provided, and reliance on the information will not cause undue delay or prejudice to any party.

(c) Paragraph (a) of this section does not constitute authority to withhold information from Congress.

§ 3008.6 Required action upon ex parte communications.

(a) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that the communication will not be considered, and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(b) Commission decision-making personnel who receive, or who make or knowingly cause to be made, ex parte communications prohibited by this

part shall promptly place, or cause to be placed, on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1) and (2) of this section.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. In lieu of actually receiving rebuttal material, the Commission may in its discretion direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3008.7 Penalty for violation of ex parte communication rules.

(a) The penalties for violation of ex parte communication rules specified in this section are applicable only to:

(1) Nature of postal service proceedings conducted pursuant to 39 U.S.C. 3661(c);

(2) Appeal of Postal Service decisions to close or consolidate any post office conducted pursuant to 39 U.S.C. 404(d)(5); and

(3) Rate or service complaints conducted pursuant to 39 U.S.C. 3662.

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of §3008.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of §3008.5(a)

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sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

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Subpart A—General Provisions

§ 3010.1 Definitions.

(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

(b) *Annual limitation* means:

(1) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3010.21;

(2) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3010.22; and

(3) In the case of a notice of a Type 1-C rate adjustment, the annual limitation calculated pursuant to § 3010.21 or § 3010.22, as applicable, for the most recent notice of a Type 1-A or Type 1-B rate adjustment.